IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2581 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KEDIYA CERA TILES PVT. LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 2581 of 2004
MR PARESH M DAVE for Petitioner No. 1-2
MS DHARMISHTA RAVAL for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 28/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Ms Dharmishta Raval, learned senior standing counsel for the Central Government waives service of Rule on behalf of the respondents.

In the facts and circumstances, the petition is taken up for final disposal today.

2. In this petition under Article 226 of the Constitution, the petitioners have challenged the order dated 2.8.2002 (Annexure "A") passed by the Commissioner of Central Excise (Appeals), Vadodara in Appeal Nos. 592 & 593 of 2002 and the order dated 23.9.2003 (Annexure "B") passed by the Customs, Excise & Service Appellate Tribunal, Mumbai in Appeal Nos.3406 and 3410 of 2002 dismissing the appeals on the ground that the amounts involved in the two appeals were small as provided in the second proviso to sub-section (1) of Section 35B of the Central Excise Act, 1944 under which the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clauses (b), (c) or (d) of sub-section (1) where the amount of fine or penalty determined by such order does not exceed Rs.50,000/-. The amounts involved in the two appeals were - duty amount of Rs.30,767 and penalty of Rs.1000 in one appeal and duty amount of Rs.12,112 and penalty of Rs.500 in the other appeal.

3. This petition would also have met the same fate on the same ground, but Mr Paresh M Dave, learned counsel for the petitioners has submitted that there is violation of principles of natural justice in as much as the request for adjournment made on behalf of the petitioners on 20.7.2002 which was received by the Office of the Commissioner (Appeals) on 24.7.2002 was not brought to the notice of the Commissioner (Appeals) at the hearing of the appeals on 25.7.2002 or even when the order came to be passed by the Commissioner (Appeals) on 2.8.2002. In support of the said submission, reliance has been placed on the letter dated 20.7.2002 of the petitioners addressed to the Commissioner (Appeals) stating that their Central Excise Consultant Mr KC Rathod was not keeping well and, therefore, the hearing may be adjourned after 15 days from 25.7.2002 to enable the petitioners to attend the personal hearing. That letter is also accompanied by the acknowledgment slip of the courier on which there is an endorsement dated 24.7.2002 with the rubber stamp of the Office of the Commissioner (Appeals).

4. In view of the said material on record, the learned senior standing counsel for the respondents is not in a position to dispute that the petitioners' request for adjournment was not brought to the notice of the Commissioner (Appeals).

5. On this short ground alone, we are inclined to

set aside the order of the Commissioner (Appeals) and also the order of the Tribunal and to remand the matter to the Commissioner (Appeals) to decide the appeals afresh after giving the petitioners an opportunity of being heard.

6. The petition is accordingly allowed. The impugned order dated 2.8.2002 (Annexure "A") passed by the Commissioner of Central Excise (Appeals), Vadodara in Appeal Nos. 592 & 593 of 2002 and the order dated 23.9.2003 (Annexure "B") passed by the Customs, Excise & Service Appellate Tribunal, Mumbai in Appeal Nos.3406 and 3410 of 2002 are quashed and set aside with a direction to the Commissioner (Appeals) to hear and decide the appeals after giving the petitioners an opportunity of being heard.

We also record the statement coming from Mr Paresh M Dave, learned counsel for the petitioners that on the next date of hearing the petitioners shall appear without seeking any adjournment.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-